

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CRIMINAL DOCKET NO.: 3:95CR178**

UNITED STATES OF AMERICA)
)
)
vs.) ORDER
DUANE JELEAL OSBOURNE (12),)
)
)
Defendant.)
)
)

THIS MATTER is before the Court on Defendant's "Motion to Modify Term of Imprisonment Pursuant to 18 U.S.C. § 3582(c)(2) Amended United States Sentencing Guidelines," filed September 19, 2005, and "Amended Motion to Modify Term of Imprisonment Pursuant to 18 U.S.C. § 3581(c)(2) Amended United States Sentencing Guidelines," filed October 27, 2005.

On March 16, 1996, a jury convicted Defendant of conspiracy to possess with intent to distribute cocaine and cocaine base within 1000 feet of a protected location, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 860. This Court, on November 13, 1996, sentenced Defendant to 360 years imprisonment. Judgment was entered December 26, 1996. Subsequently, on May 20, 2002, Defendant filed a Motion to Modify Sentence Pursuant to 18 U.S.C. § 3582(c)(2), which this Court denied in an Order filed December 24, 2002.

Now Defendant again asks the Court to modify his sentence pursuant to 18 U.S.C. § 3582(c)(2).¹ As argued in his May 20, 2002 Motion, Defendant contends that the enhancement of

¹Defendant makes the same legal argument in both his "Motion to Modify Term of Imprisonment . . ." and his "Amended Motion To Modify Term of Imprisonment . . .".

his sentence pursuant to U.S.S.G. § 2D1.2 was impermissible under Amendment 591 to the United States Sentencing Guidelines, and asks the Court to retroactively apply Amendment 591.

For the reasons stated by the Court in its Order dated December 24, 2002, Defendant's sentence comports with Amendment 591 and he is not entitled to a modification of his sentence.

IT IS, THEREFORE, ORDERED that Defendant's "Motion to Modify Term of Imprisonment Pursuant to 18 U.S.C. § 3582(c)(2) Amended United States Sentencing Guidelines," is hereby **DENIED**.

IT IS FURTHER ORDERED that Defendant's "Amended Motion to Modify Term of Imprisonment Pursuant to 18 U.S.C. § 3582(c)(2) Amended United States Sentencing Guidelines" is hereby **DENIED**.

Signed: December 14, 2005



Richard L. Voorhees
United States District Judge



